

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN
THE KANSAS DEPARTMENT FOR AGING AND
DISABILITY SERVICES
AND**

THIS Business Associate Agreement (the "Agreement") is made and entered into effective _____, 2012, by and between the Secretary of the Kansas Department for Aging and Disability Services ("KDADS") and _____ ("Business Associate"), all of whom may collectively hereinafter be referred to as the "Parties".

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public law 104-191, known as "the Administrative Simplification provisions" direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplifications provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" (the "HITECH ACT") provides modifications to the HIPAA Security and Privacy Rule (hereinafter all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH ACT and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, the Parties have entered into an agreement whereby Business Associate will provide certain services to KDADS and, pursuant to such agreement, Business Associate is considered a "business associate" of KDADS as the same is defined in the HIPAA Security and Privacy Rule.

NOW, THEREFORE, for and in consideration of their mutual promises contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. INTRODUCTION

KDADS has one or more contracts with BUSINESS ASSOCIATE to provide various services under Medicaid. In its contractual duties, BUSINESS ASSOCIATE may receive from KDADS Protected Health Information ("PHI"). Federal and state laws restrict use or disclosure of such information. The exchange of information under this Agreement is protected by HIPPA, as amended by Subtitle D of the Health Information Technology for Economic and Clinical

Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the “HITECH Act”) and the federal regulations published at 45 C.F.R. parts 160 and 164 (collectively hereinafter termed “HIPAA”). With regard to the services that the Business Associate will be providing, KDADS is a “Covered Entity” and the Parties are entering into this Agreement to establish the responsibilities of both Parties regarding HIPAA-covered information.

II. DEFINITIONS

Except as otherwise defined herein, any and all capitalized or other terms used in this Agreement shall have the definitions set forth in the HIPAA Security and Privacy Rule, and the HITECH ACT, as currently existing or as may be amended.

The term “Protected Health Information” (“PHI”) means individually identifiable health information including, without limitation, all information, data, documentation and materials including, without limitation, all demographic medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies that individual; or the past present, or future payment for the provisions of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, without limitation, “Electronic Protected Health Information”, as is defined below.

“Electronic Health Information” means PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all PHI that is created or received by KDADS and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by KDADS to Business Associate or is created or received by Business Associate on KDADS’ behalf shall be subject to this Agreement.

III. OBLIGATIONS OF KDADS

A. KDADS shall designate one liaison to serve as the single point of contact for BUSINESS ASSOCIATE. Brad Ridley shall be KDADS’ liaison.

IV. OBLIGATIONS OF BUSINESS ASSOCIATE

A. GENERAL OBLIGATIONS

1. BUSINESS ASSOCIATE shall designate one liaison to serve as a single point of contact for KDADS.

2. BUSINESS ASSOCIATE will use the PHI to solely perform the Medicaid Contract(s) entered into with KDADS.

3. BUSINESS ASSOCIATE agrees that all PHI obtained in the scope of this Agreement is confidential and agrees that it shall safeguard and maintain confidentiality in accordance with federal and state law. BUSINESS ASSOCIATE agrees that the use or disclosure of PHI for any purpose other than as provided for herein is strictly prohibited by federal and state law. Further, BUSINESS ASSOCIATE agrees not to disclose any PHI obtained from the KDADS for purposes other than those described herein unless it has obtained express written prior approval from KDADS.

4. BUSINESS ASSOCIATE agrees to inform all employees and/or agents accessing PHI that the violation of this Agreement may result in disciplinary action or criminal prosecution if warranted. BUSINESS ASSOCIATE also agrees to take appropriate disciplinary action against its respective employees or and/or agents that are found to have violated this Agreement, in a manner consistent with BUSINESS ASSOCIATE's policies and procedures. BUSINESS ASSOCIATE agrees to provide KDADS upon request a copy of its policies and procedures relative to handling and safe guarding PHI.

5. BUSINESS ASSOCIATE agrees that it is responsible for compliance with the terms of this Agreement by its employees and/or agents. For purposes of this Agreement the term "employees and/or agents" means faculty (regular or visiting), employees, staff, students (graduate or undergraduate), independent contractors and any and all other persons or entities which may have anything to do with the underlying agreement between KDADS and Business Associate.

6. BUSINESS ASSOCIATE may not release, reproduce, distribute or publish any PHI or other confidential information obtained in the performance of this Agreement without prior written permission of KDADS. BUSINESS ASSOCIATE shall accept full responsibility to ensure the confidentiality of data obtained from KDADS.

B. SECURITY OBLIGATIONS. Sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations, apply to the BUSINESS ASSOCIATE in the same manner that such sections apply to KDADS. The BUSINESS ASSOCIATE's obligations include, but are not limited to, the following:

Security Rule Requirements:

1. Safeguards to be in Place: BUSINESS ASSOCIATE shall abide by all provisions of the Security Rule and use all appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, BUSINESS ASSOCIATE shall:

a. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and

availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of KDADS as required by the Security Rule;

b. Adopt written policies and procedures to implement the same Administrative, Physical and Technical Safeguards currently required of KDADS; and

c. Abide by the most current guidance issued by the Secretary on the most effective and appropriate Technical Safeguards.

2. Duty to Report to KDADS: BUSINESS ASSOCIATE agrees to report to KDADS any use or disclosure of PHI not provided for by this Agreement or the Privacy Rule of which it becomes aware to include any Security Incident of which it becomes aware under the Security Rule. Accordingly, the BUSINESS ASSOCIATE agrees to report any successful Security Incident of which it becomes aware to KDADS immediately, but not later than five (5) calendar days after the Security Incident. Further, BUSINESS ASSOCIATE agrees to report any attempted Security Incident of which it becomes aware to KDADS in the time, method and manner identified by KDADS. In addition, BUSINESS ASSOCIATE agrees to provide detailed information regarding any Security Incident(s) to KDADS upon request, within the capabilities of BUSINESS ASSOCIATE. All reports provided by BUSINESS ASSOCIATE pursuant to this Section shall include the actions and the mitigation steps, if any, taken by BUSINESS ASSOCIATE in response to the Security Incident(s).

The term "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

3. Breach Notification: In the event that the BUSINESS ASSOCIATE discovers that BUSINESS ASSOCIATE has committed a Breach of Unsecured Protected Health Information, the BUSINESS ASSOCIATE agrees to take the following Dept. of Health and Human Services measures within 30 calendar days after the BUSINESS ASSOCIATE first becomes aware of the incident:

a. To notify the State of any incident involving the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted under 45 C.F.R. part E. Such notice by the BUSINESS ASSOCIATE shall be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this provision, BUSINESS ASSOCIATE must notify the State of any such incident within the above timeframe even if BUSINESS ASSOCIATE has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA. For purposes of this Agreement, the BUSINESS ASSOCIATE is deemed to have become aware of the Breach as of the first day on which such Breach is known or reasonably should have been known to such entity or associate of the BUSINESS

ASSOCIATE, including any person, other than the individual committing the Breach, that is an employee, officer or other agent of the BUSINESS ASSOCIATE or an associate of the BUSINESS ASSOCIATE;

b. To include the names of the Individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach;

c. To complete and submit the Breach Notice form to the State (see Exhibit A); and To include a draft letter for the State to utilize to notify the Individuals that their Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach. The draft letter must include, to the extent possible:

i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

ii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as full name, Social Security Number, date of birth, home address, account number, disability code, or other types of information that were involved);

iii. Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;

iv. A brief description of what the State and the BUSINESS ASSOCIATE are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and

v. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

4. Duty for BUSINESS ASSOCIATE's Employees and/or Agents: BUSINESS ASSOCIATE agrees to ensure that any employee and/or agent to whom it provides PHI received from, or created and received by BUSINESS ASSOCIATE on behalf of KDADS agrees to the same restrictions and conditions that apply throughout this Agreement to BUSINESS ASSOCIATE with respect to such information to include, without limitation, the implementation of reasonable and appropriate safeguards to protect Electronic PHI. Such assurances shall be in writing and obtained prior to any disclosure of Electronic PHI from BUSINESS ASSOCIATE to BUSINESS ASSOCIATE's employees and/or agents.

C. PRIVACY OBLIGATIONS. To comply with the privacy obligations imposed by HIPAA, BUSINESS ASSOCIATE agrees to:

1. Not use or further disclose information other than as permitted or required by this Agreement, or as required by law;
2. Abide by any Individual's request to restrict the disclosure of Protected Health Information consistent with the requirements of Section 13405(a) of the HITECH Act;
3. Ensure that any employee and/or agents, to whom the BUSINESS ASSOCIATE provides Protected Health Information received from KDADS or created or received by the BUSINESS ASSOCIATE on behalf of KDADS, agrees to the same restrictions and conditions that apply to the BUSINESS ASSOCIATE with respect to such information;
4. Make available to KDADS within fifteen (15) days Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;
5. Make available to KDADS within fifteen (15) business days the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of the HITECH Act;
6. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from KDADS, or created or received by the BUSINESS ASSOCIATE on behalf of KDADS, available to the Secretary for purposes of determining KDADS' compliance with HIPAA;
7. To the extent practicable, mitigate any harmful effects that are known to the BUSINESS ASSOCIATE of a use or disclosure of Protected Health Information or a Breach of Unsecured Protected Health Information in violation of this Agreement;
8. Use and disclose an Individual's Protected Health Information only if such use or disclosure is in compliance with each and every applicable requirement of 45 C.F.R. § 164.504(e);
9. Refrain from exchanging any Protected Health Information with any entity of which the BUSINESS ASSOCIATE knows of a pattern of activity or practice that constitutes a material breach or violation of HIPAA or this Agreement;
10. To comply with Section 13405(b) of the HITECH Act when using, disclosing, or requesting Protected Health Information in relation to this Agreement by limiting disclosures as required by HIPAA; and
11. Not participate in any marketing activities relating or pertaining to PHI provided by KDADS.

D. PERMISSIVE USES. The BUSINESS ASSOCIATE may use or disclose Protected Health Information that is disclosed to it by KDADS under the following circumstances:

1. BUSINESS ASSOCIATE may disclose the information for its own management and administration and to carry the legal responsibilities of the BUSINESS ASSOCIATE if (a) the disclosure is required by law, or (b) the BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that the information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

V. CONFIDENTIALITY

Pursuant to applicable law, PHI that BUSINESS ASSOCIATE will have access to and/or receive from KDADS may be used or disclosed only in accordance with this Agreement and the Privacy Rule. KDADS is a Covered Entity under the act and therefore BUSINESS ASSOCIATE is not permitted to use or disclose PHI in ways that KDADS could not. This protection continues as long as the data is in the hands of BUSINESS ASSOCIATE. For purposes of this section, the terms "Protected Health Information" and "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103 and is individually identifiable information in any medium pertaining to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, that BUSINESS ASSOCIATE receives from KDADS or that BUSINESS ASSOCIATE creates or receives on behalf of KDADS. The terms "Protected Health Information" and "PHI" apply to the original data and to any health data derived or extracted from the original data that has not been de-identified. Electronic protected health information (hereinafter "EPHI") is a subset of PHI and means individually identifiable health information that is transmitted by or maintained in electronic media.

A. Required/Permitted Uses - §164.504(e)(2)(i): BUSINESS ASSOCIATE is required/permitted to use the PHI only for the purposes described in this Agreement: to provide professional legal services.

B. Required/Permitted Disclosures - §164.504(e)(2)(i): BUSINESS ASSOCIATE shall disclose KDADS' PHI only as allowed herein or as specifically directed by KDADS.

C. Limitation of Use and Disclosure - §164.504(e)(2)(ii)(A): BUSINESS ASSOCIATE agrees that it will not use or further disclose PHI other than as permitted or required by this Agreement, the Contract or as required by law.

D. Disclosures Allowed for Management and Administration - §164.504(e)(2)(i)(A) and 164.504(e)(4)(i): Notwithstanding any other provision to the contrary herein,

BUSINESS ASSOCIATE is permitted to use and disclose PHI received from KDADS in its capacity as a recipient of PHI from KDADS if such use is necessary for the management and administration of the BUSINESS ASSOCIATE's obligations under the Contract with KDADS or to carry out the legal responsibilities of BUSINESS ASSOCIATE.

E. Minimum Necessary: BUSINESS ASSOCIATE agrees to limit the amount of PHI used and/or disclosed pursuant to this Agreement to the minimum necessary to achieve the purpose of the use and disclosure.

F. Safeguarding and Securing PHI - §164.308, 164.310, 164.312, 164.314 and 164.504(e)(2)(ii)(B): BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or EPHI that BUSINESS ASSOCIATE creates, receives, maintains, or transmits. BUSINESS ASSOCIATE will furnish KDADS with a written description of such safeguards upon request. BUSINESS ASSOCIATE agrees to allow authorized representatives of KDADS access to premises where the PHI and/or EPHI is kept for the purpose of inspecting physical security arrangements during normal business hours and upon reasonable prior written notice to BUSINESS ASSOCIATE. Because the PHI belonging to KDADS may be co-located with that from other entities, KDADS agrees not to use or disclose any such PHI with which it comes into contact during such inspections.

BUSINESS ASSOCIATE shall use reasonable efforts to update its privacy and security policies, procedures, processes and protections as operational and environmental changes warrant, safeguarding the privacy and security of protected health information provided under this Agreement. On a biennial basis, BUSINESS ASSOCIATE shall conduct an internal review and evaluation of physical and data security operating procedures and personnel practices and shall provide KDADS with verification of such review.

G. Agents and Sub-Contractors - §164.504(e)(2)(ii)(D): BUSINESS ASSOCIATE will ensure that any entity, including employees and/or agents, independent contractors, contract employees and sub-contractors, to whom it discloses PHI received from KDADS or created or received by BUSINESS ASSOCIATE on behalf of KDADS, agree to the same restrictions, conditions and safeguards that apply to BUSINESS ASSOCIATE with respect to such information.

H. Right to Review: KDADS reserves the right to review terms of agreements and contracts between the BUSINESS ASSOCIATE and its employees and/or agents as they relate to the use and disclosure of PHI belonging to KDADS.

I. Ownership: BUSINESS ASSOCIATE shall at all times recognize ownership of the PHI by KDADS.

J. Notification of Disclosure - §164.304, 164.314 (a)(2)(C) and 164.504(e)(2)(ii)(C): BUSINESS ASSOCIATE shall notify KDADS, both orally and in writing, of any use or disclosure of PHI and/or EPHI not allowed by the provisions of this Agreement of which

it becomes aware, and of any instance where the PHI is subpoenaed, copied or removed by anyone except an authorized representative of KDADS or BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall report to KDADS any security incident which compromises the privacy and/or security of KDADS PHI within ten (10) business days of becoming aware of such incident. For the purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or interference with systems operations in an information system.

In the event of a security breach or disclosure that compromises the privacy or integrity of PHI, BUSINESS ASSOCIATE shall, within ten (10) days of the discovery of said breach or disclosure, notify the KDADS privacy officer and shall take all other measures required by state or federal law. BUSINESS ASSOCIATE shall provide KDADS with a copy of its investigation results. KDADS will take appropriate remedial measures up to termination of this Agreement pursuant to Section 17 below.

K. Transmission of PHI § 164.312 (c)(1) and 164.312 (c)(2): BUSINESS ASSOCIATE agrees to follow the HIPAA standards with regard to the transmission of PHI. All PHI exchanged between KDADS and BUSINESS ASSOCIATE will be via a secure mechanism. If electronic media is utilized, such information will be password protected by a password consisting of at least eight characters with four character types (upper case, lower case, symbols and numbers) and will be encrypted.

L. Employee and/or Agent Compliance with Applicable Laws and Regulations: BUSINESS ASSOCIATE agrees to require each of its employees and/or agents having any involvement with the PHI to comply with applicable laws and regulations relating to security, confidentiality and privacy of the PHI and with the provisions of this Agreement.

M. Custodial Responsibility: BUSINESS ASSOCIATE will designate an employee as the custodian of PHI and will be responsible for observance of all conditions of use. If custodianship is transferred within the organization, BUSINESS ASSOCIATE shall notify KDADS, in writing, promptly.

N. Access, Amendment, and Accounting of Disclosures § 164.504(e)(2)(ii)(E-G): BUSINESS ASSOCIATE will provide access to the PHI in accordance with 45 C.F.R. § 164.524. BUSINESS ASSOCIATE will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. § 164.526. BUSINESS ASSOCIATE will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.

In addition, BUSINESS ASSOCIATE must provide access in an electronic format to any PHI maintained in an Electronic Health Record, if so requested by an Individual. Access to and a copy of the PHI must be provided to the Individual who made the request or a person of the Individual's choosing. Any fee that BUSINESS ASSOCIATE may charge for such copy in an electronic format shall not be greater than BUSINESS ASSOCIATE's labor costs in responding to the request.

O. Documentation Verifying HIPAA Compliance § 164.504(e)(2)(ii)(H):

BUSINESS ASSOCIATE will make its policies, procedures, and documentation relating to the security and privacy of PHI, including EPHI, available to the Secretary of Health and Human Services for purposes of determining KDADS' compliance with 45 C.F.R. Parts 160 and 164. BUSINESS ASSOCIATE will make these same policies, procedures, and documentation available to KDADS or its designee upon request.

P. Contract Termination § 164.314(a)(2)(i)(D) and 164.504(e)(2)(ii)(I):

BUSINESS ASSOCIATE agrees that within forty-five (45) days of the termination of this Agreement, it will return or destroy, at KDADS' direction, any and all PHI that it maintains in any form and will retain no copies of the PHI. If the return or destruction of the PHI is not feasible, the protections of this section of the Agreement shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible. Any use or disclosure of PHI, except for the limited purpose, is prohibited. KDADS acknowledges and agrees that BUSINESS ASSOCIATE will retain KDADS Member PHI as necessary for the purposes of performing its obligations under the Contract, carrying out its legal responsibilities, and ongoing licensure, as applicable.

Q. Duty to Record Disclosures: BUSINESS ASSOCIATE agrees to document such disclosures of PHI and information related to such disclosures as would be required for KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Information that BUSINESS ASSOCIATE is required to document includes, but is not limited to, disclosures made by BUSINESS ASSOCIATE through an Electronic Health Record for purposes of treatment, payment or health care operations.

R. Duty to Provide Record of Disclosures to KDADS: BUSINESS ASSOCIATE agrees to provide to KDADS or an Individual, in a time and manner specified by KDADS, information collected in accordance with Section 18, in order to permit KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. If an Individual requests that KDADS provide him or her with an accounting of disclosures made through an Electronic Health Record, KDADS may elect to request the information from BUSINESS ASSOCIATE, as provided above, and provide the Individual with the accounting directly, or, in the alternative, provide the Individual with BUSINESS ASSOCIATE's contact information (mailing address, phone and email address) and require BUSINESS ASSOCIATE to provide the accounting of disclosures made through the Electronic Health Record directly to the Individual.

S. Application of Knowledge Standards: If BUSINESS ASSOCIATE knows of a pattern of activity or practice of KDADS that constitutes a material breach or violation of KDADS' obligations under HIPAA, BUSINESS ASSOCIATE shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are

unsuccessful, BUSINESS ASSOCIATE shall either: (i) terminate the contract, if feasible; or (ii) if termination is not feasible, report the problem to the Secretary.

T. Prohibition on Sale of PHI: BUSINESS ASSOCIATE is prohibited from receiving any remuneration, directly or indirectly, in exchange for any PHI.

U. Prohibition on Marketing: BUSINESS ASSOCIATE is prohibited from engaging in any marketing activities or communications with any Individuals unless so allowed by the terms of the Agreement.

VI. TERM

This Agreement shall continue in force until it is either terminated pursuant to one or more terms herein or by mutual written agreement between the Parties. Despite such termination, herein, _____ Health Association of South Central Kansas agrees to protect any remaining PHI in accordance with the provisions herein and applicable HIPAA, state or federal law.

VII. TERMINATION

A. Termination with Cause. Upon KDADS' knowledge of a material breach or violation by BUSINESS ASSOCIATE of this Agreement, KDADS may:

1. Provide written notice of such breach or violation to BUSINESS ASSOCIATE and an opportunity for BUSINESS ASSOCIATE to cure the breach or violation within a reasonable period specified by KDADS, or end the violation and terminate this Agreement and the Contract (or the applicable provisions thereof) if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by KDADS;
2. Immediately terminate this Agreement and the Contract (or the applicable provisions thereof) if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure is feasible, report the violation to the Secretary. The termination provisions of this Agreement shall supersede any termination provisions of the Contract.
4. This Agreement can be terminated without cause by KDADS with thirty (30) days written notice; provided, that BUSINESS ASSOCIATE may continue to use the PHI for a reasonable period of time following such termination in order to perform any of its remaining obligations under the Contract.
5. A material breach shall include, but is not limited to, Business Associate's improper use or disclosure of PHI, any changes or diminution of Business

Associate's security procedures or safeguards relating or pertaining to PHI that are unsatisfactory to KDADS or a breach of any provision(s) of this Agreement.

B. Termination after Repeated Violations. KDADS may terminate the Underlying Agreement if BUSINESS ASSOCIATE repeatedly violates this Agreement or any provision hereof, regardless of whether, or how promptly, BUSINESS ASSOCIATE may remedy such violation after being notified of the same. In the event of such termination, KDADS shall not be liable for payment of any services performed or expense incurred by BUSINESS ASSOCIATE after the effective date of such termination.

C. Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this Agreement, the Parties shall attempt in good faith to renegotiate the Agreement to delete the unlawful provision(s) so that the Agreement can continue. If the Parties are unable to renegotiate the Agreement within thirty (30) days, the Agreement shall terminate immediately upon written notice of either Party.

D. Effect of Termination.

1. Except as otherwise provided in this Agreement, upon termination of this Agreement for any reason, BUSINESS ASSOCIATE shall return or destroy (at KDADS' election), and shall retain no copies of, all PHI received from KDADS, or created or received by BUSINESS ASSOCIATE on behalf of KDADS. BUSINESS ASSOCIATE shall ensure that this provision shall apply equally to PHI that is in the possession of subBusiness Associates or agents of BUSINESS ASSOCIATE.

2. In the event that BUSINESS ASSOCIATE determines that returning or destroying the PHI is infeasible, BUSINESS ASSOCIATE shall provide to KDADS written notification of the conditions that make return or destruction infeasible. Upon KDADS' written approval, which shall not be unreasonably withheld, BUSINESS ASSOCIATE may retain the PHI, but shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.

VIII. DISCLAIMER

KDADS MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES OR THAT ANY INFORMATION IN THE POSSESSION OR CONTROL OF BUSINESS ASSOCIATE, OR TRANSMITTED OR RECEIVED BY BUSINESS ASSOCIATE, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE, NOR SHALL THE KDADS BE LIABLE TO BUSINESS ASSOCIATE FOR ANY CLAIM, LOSS OR DAMAGE RELATING TO THE

UNAUTHORIZED USE OR DISCLOSURE OF ANY INFORMATION RECEIVED BY BUSINESS ASSOCIATE FROM THE KDADS OR FROM ANY OTHER SOURCE, BUSINESS ASSOCIATE ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OR PHI.

IX. GENERAL PROVISIONS

A. BUSINESS ASSOCIATE agrees, to the extent permitted by Kansas law, to indemnify and hold harmless the KDADS, the State of Kansas and their employees and officials, for any loss, damage, judgments and costs of liability arising from the improper release or use by BUSINESS ASSOCIATE of the information provided to BUSINESS ASSOCIATE by the KDADS under this Agreement.

B. BUSINESS ASSOCIATE agrees, to the extent permitted by Kansas law, to hold the KDADS harmless and to indemnify the KDADS from and against any and all claims, demands, and causes of action of every kind and character arising out of, or in connection with, acts or omissions by BUSINESS ASSOCIATE under this Agreement.

C. BUSINESS ASSOCIATE expressly understands that KDADS makes no guarantee of accuracy regarding the information provided in performance of this Agreement. Information provided to BUSINESS ASSOCIATE can only be as accurate as the information received by the KDADS. KDADS shall have no liability to any party if KDADS' software or data is unavailable, or is not correct in any respect. BUSINESS ASSOCIATE shall have no liability for the improper payment or adjudication of a claim due to inaccurate information provided to BUSINESS ASSOCIATE by KDADS.

D. Once BUSINESS ASSOCIATE uses the information supplied by KDADS for the purposes described in this Agreement and has disposed of the information in a manner consistent with the terms of this Agreement, this Agreement shall expire. BUSINESS ASSOCIATE understands that additional requests for data will require reauthorization from KODA. The obligations of this Agreement will survive the expiration or termination of this Agreement.

E. BUSINESS ASSOCIATE may not use the PHI for any commercial or political purpose not otherwise specified in this Agreement.

F. There is no third party beneficiary to this agreement between the Parties. This agreement is only intended to benefit the Parties to this agreement.

G. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the Privacy Rule (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the terms of the Privacy Rule shall prevail.

H. Where provisions of this Agreement are different from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of the Agreement shall control.

I. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits KDADS to comply with the Privacy Rule, the Electronic Transactions Standards, or any other requirement under the HIPAA law.

J. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part by _____, without the prior written consent of KDADS.

K. All PHI shall be and remain the exclusive property of KDADS. BUSINESS ASSOCIATE agrees that it acquires no title or property rights whatsoever to the PHI, including any de-identified information, as a result of this Agreement.

L. The respective rights and obligations of BUSINESS ASSOCIATE under this Agreement shall survive the termination of this Agreement.

M. The Parties agree to cooperate and take such action as is necessary to amend this Agreement from time to time as is necessary for KDADS to comply with the requirements of the Privacy Rule and HIPAA.

N. A reference in this Agreement to a section in the HIPAA law, the Security or Privacy Rule, or the Electronic Transactions Standards, or the HITECH ACT means the section as in effect or as amended.

O. This document, together with any written Schedules, amendments and addenda, constitutes the entire agreement of the Parties and supersedes all prior oral and written agreement negotiations or understandings between them with respect to the matters provided for herein.

P. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas to the extent that the provisions of HIPAA or the Security or Privacy Rule and/or the HIGHTECH ACT do not preempt the laws of the State of Kansas. Should a pretrial be necessary, the Parties agree that the sole venue shall be the District Court of Shawnee County, Topeka, Kansas.

Q. The Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.

R. The use of the masculine, feminine or neuter genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word "person" or "party" shall mean and include any individual, trust, corporation, partnership or other entity.

S. The Parties acknowledge and understand that all of the provisions in the “Contractual Provisions Attachment,” Form DA-146a (Rev. 10-11), that are applicable to the transaction contemplated by this Agreement, shall be incorporated into and made a part of this Agreement as if fully recited herein. A copy of DA-146a is attached hereto as Schedule 1 and its terms incorporated herein.

T. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

U. Each party has cooperated in the drafting and preparation of this Agreement. Hence, if any construction is to be made to this Agreement, the same shall not be construed for or against any party.

V. Time is of the essence in this Agreement.

W. Paragraph headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

X. Pursuant to the Governor’s Executive Reorganization Order, KDADS will change its name to the “Kansas Department for Aging and Disability Services” effective July 1, 2012. The Parties agree that such transition shall not affect the validity of this Agreement. Following July 1, 2012, the Parties agree that any reference to KDADS shall be construed as KDADS.

X. CONTACT PERSON

The contact person for BUSINESS ASSOCIATE is:

The contact person for KDADS is:

Brad Ridley
New England Building
503 S Kansas Avenue
Topeka, KS 66603
Telephone: (785) 296-6455
Email: brad.ridley@aging.ks.gov

XI. SIGNATORY

Having agreed to the terms herein, the undersigned Parties hereby represent and warrant that they are authorized to enter into and execute this Agreement.

By: _____

Date

KANSAS DEPARTMENT FOR AGING AND
DISABILITY SERVICES

By: _____
Shawn Sullivan

Date

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.